



REQUEST FOR PROPOSAL (RFP)

Date: May 20, 2016

RFP NUMBER: **0520-16-ENG**

RFP SUBJECT: **Engineering Services**

SEALED PROPOSALS
TO BE SUBMITTED ONLY TO:

Purchasing Office/City of Falls Church
300 Park Avenue, Rm 300 East
Falls Church, Virginia 22046 / Phone (703) 248-5007

PROPOSAL DUE DATE AND TIME: **by no later than Tuesday, June 28, 2016 at 11:00 a.m.**
Prevailing Local time (Purchasing Office Clock)

Proposals are to be presented for time and date validation
ONLY to the City of Falls Church Purchasing Office.

All inquiries and questions should be made in writing and forwarded to Jim Wise, Purchasing Agent, via email to jwise@fallschurchva.gov with copy to kbattle@fallschurchva.gov by no later than **five (5) business days prior to the RFP due date (COB Tuesday, June 21, 2016).**

TWO (2) NON-MANDATORY PRE-PROPOSAL CONFERENCE MEETINGS: *See page 7 for details*

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**THIS PAGE AND ALL REQUIRED FORMS MUST BE COMPLETED, SIGNED,
AND RETURNED WITH PROPOSAL**

In compliance with this Request For Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal.

Please type or legibly print all information.

LEGAL NAME & ADDRESS OF FIRM:

Company's Legal Name By: _____
Authorized Representative - Signature in Ink

Street Address (not PO Box) Name: _____

Title: _____

Zip: _____ Date _____

Phone: _____ Email: _____

FAX: _____ VA SCC Business Registration # _____
See Section V - "Proof of Authority to Transact Business in VA"

Offer package contains appropriately marked proprietary and/or confidential Information. ☐ No ☐ Yes

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability or that this document be made available in an alternate format, call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Offeror or Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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ADDITIONAL ATTACHMENTS:

Please download the following RFP Attachments separately:

ATTACHMENT A - General Requirements

- I. Purpose
- II. Scope of Work
- III. Proposal Submittal Guidelines
- IV. Delivery of Proposals
- V. Criteria for Proposal Evaluation

ATTACHMENT B - Stormwater & Sanitary Engineering

- Detailed Scope of Work

ATTACHMENT C - Transportation Engineering

- Detailed Scopes of Work:
 - ✓ Group 1 – Basic Transportation Engineering Services
 - ✓ Group 2 – Comprehensive Transportation Engineering Services

ATTACHMENT D - Forms

The following must be completed and submitted with all Proposal Packages:

- Authority to Transact Business in Virginia

The following must be completed and submitted with Proposal Packages for Transportation Planning and Engineering Services:

- Debarment Certification Forms (Mandatory VDOT/Federal-Aid)

ATTACHMENT E - VDOT and Federal Contract Clauses

I. SUBJECT

The City of Falls Church ("City") is soliciting proposals from qualified firms to provide professional engineering services as is further described herein. Proposals are sought in two separate service categories, with the second category divided into two groups:

- Stormwater and Sanitary Engineering
- Transportation Planning and Engineering
 1. Group 1 – Basic Transportation Engineering Services
 2. Group 2 – Comprehensive Transportation Engineering Services

Offerors may submit a maximum of two (2) proposals, one for the Stormwater and Sanitary Engineering category and one for the Transportation Planning and Engineering category. See Attachment A for General Requirements, including Criteria for Proposal Evaluation, and Attachments B and C for detailed Scopes of Work and proposal submittal guidelines for each of the two service categories.

The City intends to make multiple awards within each service category for these professional services. The resultant contracts will be "basic ordering agreements," under which task orders will be issued, on an as-needed basis. A minimum of three (3) contract awards will be made in the Transportation Planning and Engineering service category; the City hopes to award at least two contracts in Group 1 and three in Group 2.

II. GENERAL

- A. The term "Consultant" in this solicitation shall be understood as synonymous with the term "Contractor." The term "Subconsultant" shall likewise be understood as synonymous with "Subcontractor" and shall include firms and/or persons either directly or indirectly employed by Consultant, partners identified in the proposal, and/or others furnished by or acting at Consultant's direction or on Consultant's behalf under the contract.
- B. ACCESS TO RFP UPDATES: This RFP and any addenda are available on the City of Falls Church's website: www.fallschurchva.gov/Bids. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (www.eva.virginia.gov).
- C. Offerors should note that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the RFP. **Offerors are solely responsible for checking the Website to insure that they have the most current information regarding the RFP.**
All addenda must be signed and submitted with your proposal.
- D. All questions pertaining to this solicitation must be **in writing** and received by no later than five (5) business days prior to the RFP closing date. All questions shall be directed only to:

Jim Wise, Purchasing Agent
 The City of Falls Church
 300 Park Ave, Falls Church, VA 22046
jwise@fallschurchva.gov Phone: 703.248.5007 (TTY 711)
 with a copy to kbattle@fallschurchva.gov

No inquiries, if received by the Purchasing Agent in less than five (5) business days of the date set for the opening of proposals, will be given any consideration. Any material question or interpretation of a specification or requirement, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be posted on the City's website (www.fallschurchva.gov/Bids) no later than three (3) days before the date set for receipt of

proposals. If utilized for the initial RFP release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers).

Oral answers will not be authoritative.

- E. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.
- F. ACCEPTANCE OF PROPOSALS - BINDING 160 DAYS: All proposals submitted shall be binding for a one hundred and sixty (160) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
- G. CONTACT RESTRICTED - No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Agent or Purchasing Agent's designee concerning or related to this RFP, after the date of this solicitation's release and before award or cancellation of this RFP except with the foreknowledge and permission of the Purchasing Agent or his/her representative. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Offeror from this procurement process.
- H. INFORMATION RESTRICTED – All requests to or from an Offeror, potential Offeror or other third party regarding information about this Solicitation, including its interpretation, progress, negotiations and/or award status should be referred directly to the City's Purchasing Agent or designee. Failure to comply with this requirement may be cause for an Offeror's disqualification. This restriction does not apply to reasonable and necessary communications with existing or potential subcontractors or partners for the sole purpose of an Offeror's proposal development and/or proposal update under this Solicitation.
- I. This solicitation is being conducted in accordance with the guidelines of the Competitive Negotiation (Professional Services) method of contractor selection per the Virginia Public Procurement Act which is incorporated herein by reference.

III. COMPETITION INTENDED

It is the City of Falls Church's intent that this Request for Proposals (RFP) permits competition. It shall be the Offeror's responsibility to advise the City's Purchasing Manager, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Manager not later than fifteen (15) days prior to the date set for acceptance of proposals. Any such notification shall be sent to the City's Purchasing Agent's email address: jwise@fallschurchva.gov with a copy to kbattle@fallschurchva.gov. Confirmation of email receipt shall be the responsibility of the notifying Offeror.

Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All qualified Offerors are encouraged to submit proposals.

IV. ELIGIBILITY

A. The following are minimum requirements for proposal submission:

1. The Offeror must submit its Virginia State Corporation Commission ("SCC") registration number or justification for exemption. See Section below entitled "Proof of Authority to Transact Business in Virginia".
2. The Offeror must be currently licensed in accordance with any specific requirements of this solicitation and the Code of Virginia (Architect, Licensed Engineer, Contractor's license, etc).

It is the Offeror's sole responsibility to have knowledge of the applicable licenses(s), if any, associated with this solicitation's scope of work. Any applicable license shall be maintained during the term of any resultant contract.

- B. Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting bids on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this solicitation.
- C. Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form attached to this solicitation.

V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

- A. State Corporation Commission (SCC) registration requirements effective July 1, 2010 require that proposals include the identification number issued by the State Corporation Commission as proof of registration or justification for non-registration, per the requirements in this section. **Please complete the Proof of Authority to Transact Business in Virginia form (found in Attachment D) and submit it with your Proposal. Failure to provide this information or providing inaccurate or purged information may result in rejection of your proposal.**
- B. A firm organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its proposal the identification number issued to it by the State Corporation Commission (SCC). The Offeror shall provide its SCC ID number on the cover sheet of this solicitation and on the appropriate form.
- C. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its Proposal, for consideration by the City, a signed statement attached to the Cover Sheet of this RFP, describing why the Offeror is not required to be so authorized under Title 13.1 or Title 59 of the Code of Virginia. Any Offeror described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, shall not receive an award unless a waiver of this requirement is granted, in writing, by the City Manager.

VI. RIGHTS OF THE CITY

- A. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:
 - 1. Cancel, withdraw or re-advertise this RFP; accept or reject all or any part of proposals; and/or waive minor technicalities/informalities.
 - 2. Award a contract to multiple vendors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.
 - 3. Issue RFPs for similar work and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for work similar to that being proposed hereunder, in consideration of the City's knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.
 - 4. Add, delete or change services, locations, requirements, frequency of service, or other factors related to the products and/or work under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
 - 5. Use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- B. This is a Request for Proposals and is in no way to be misconstrued as a commitment to purchase on the part of the City.

VII. NON-MANDATORY PRE-PROPOSAL CONFERENCE MEETINGS

- A. Two (2) non-mandatory Pre-proposal Conference Meetings will be held as follows:
- **Transportation Engineering (Groups 1 and 2)** is scheduled for **Thursday June 2, 2016 at 1:30 PM** in the City's Dogwood Conference Room (City Hall, 300 Park Avenue, Falls Church, VA 22046).
 - **Stormwater and Sewer Engineering** is scheduled for **Friday, June 3, 2016 at 10:00 AM** in the City's Dogwood Conference Room (City Hall, 300 Park Avenue, Falls Church, VA 22046).
- B. The purpose of these Meetings is to allow Offerors an opportunity to present questions and obtain clarification relative to any facet of this RFP. Due to the importance of a clear understanding of the Scope of work and requirements of this RFP, attendance at the relevant meeting(s) is very strongly encouraged.
- C. Please bring a copy of this RFP to the conference. Any material RFP changes resulting from this conference will be issued in a written addendum to the solicitation.

VIII. DETAILED SCOPES OF WORK

See Attachment B for Detailed Scope of Work – Stormwater and Sanitary Engineering.

See Attachment C for Detailed Scope of Work – Transportation Engineering, Group 1 and Group 2.

IX. PROPOSAL PREPARATION & SUBMITTAL GUIDELINES

See Attachment A.

X. OVERVIEW - PROCESS OF CONSULTANT EVALUATION & SELECTION

The City's procurement, evaluation and selection process for professional engineering consultant services shall comply with the Virginia Public Procurement Act (VPPA), Section 2.2-4302 *Process for competitive negotiation*.

Using the criteria specified in this RFP, each proposal will be individually scored by City Selection Committee ("Committee") team members. The Committee will then meet and finalize a combined ranking of all proposals. In each of the service categories, including both Groups within the Transportation Planning and Engineering category, a minimum of three consultants will be selected for further evaluation and presentations (the "short list"). The short-listed firms will be notified in writing and advised of the schedule for interviews and/or presentations; detailed cost proposals and additional documentation will be requested by the City Purchasing Agent (see Section XII *Cost/Rate Proposals*).

After interview/presentations are completed, the Committee will meet to discuss and determine the ranking order ("Final Ranking"). Notification will be sent to all short-listed firms and posted publicly.

The City's Purchasing Agent will contact the top-ranked offeror and begin negotiations. The purpose of the negotiations is to agree upon a contract and rates which are reasonably acceptable to all parties. Only one consultant may be negotiated with at any one time. If a mutually agreeable contract cannot be finalized with the top-ranked firm, then negotiations with that firm will be formally terminated and negotiations with the second-ranked offeror will begin as required by the VPPA.

For firms submitting proposals in the Transportation Planning and Engineering service categories, VDOT's Assurance and Compliance Office (ACO) will conduct a pre-award evaluation. Each consultant firm is required to submit a Federal Acquisition Regulations (FAR) audit, meeting the requirements of Part 31 of Title 48 of the Code of Federal Regulations. Pre-award evaluation will consist of a review of the offeror's financial capability, adequacy of accounting systems, appropriateness of overhead rates, labor additives and similar add-ons. The FAR Audit consists of a determination of costs eligible for

reimbursement on federally funded agreements conducted in accordance with Cost Accounting Standards issued by the Cost Accounting Standards Board.

XI. EVALUATION / SELECTION CRITERIA

See Attachment A.

XII. COST PROPOSALS

The City **IS NOT** requesting Cost Proposals at the present time.

NO RATES, FEES, PRICES OR ANY OTHER COSTS ARE TO BE PROVIDED WITH THE INITIAL PROPOSAL PACKAGE.

Following the final ranking of short-listed firms and prior to contract negotiations, the City will request from the top ranked Offerors proposed rates, fees, subconsultant rates and other applicable price/cost considerations to be used in performing work in accordance with this RFP. When so requested by the City, Offerors shall submit detailed cost proposals, to include all Subconsultant rates and fees. Proposals shall contain a breakdown of all costs and supporting documentation, to include the following items, at minimum:

Direct Labor Costs:

- Proposed average hourly rates per position classification, supported by actual payroll registers for each employee proposed.
- Principals, partners, executives, etc. are considered administrative, whose costs should be included in the overheads. If a principal, etc. chooses to perform technical services, he/she may bill at the comparable rate to the technical activity or function being performed.

Direct Costs

- Provide sufficient information to support the basis for the costs contained, along with a certification that the costs were proposed in a manner consistent with the requirements of the consultant's accounting system, specifically stating that costs proposed as direct expenses are not included in their overhead.
- Allowable lodging and meal and incidental expense rates to be used should not exceed what is allowed in the VDOT Travel Policy. Consultant travel reimbursement is limited to the rates stipulated in the VDOT Travel Policy.
- The acquisition of any individual item or service costing more than \$5,000, but no more than \$50,000, shall be supported by at least four (4) written quotes from DMBE-certified small businesses, if available.
- Consultants (geotechnical, aerial photography, testing labs, etc. which normally work on a unit price basis probably cannot provide support for their unit prices; however, a copy of their standard fee schedule should be provided with a statement that the fees contained thereon are normal fees for such services.
- In-house rates for such items as photocopies and mileage should be reasonable, based upon actual costs.

Subconsultant Costs

- Prime consultant administrative mark-ups on costs for the managing of sub-consultants, in addition to the overhead, labor, and fixed fee are not allowed.

Rate Escalation

- A calculation showing how the escalation was derived with the breakdown of escalation amount per year of contract performance. Escalation is limited to 0.5% in the first year of the contract and 1% for all subsequent years.

Payroll Burden & Overhead Rates

- Audited in accordance with the FAR. Rates should be for a period not older than eighteen (18) months.

- The consultant and all sub-consultants must comply with the FAR audit rate requirement within ten (10) work days of being notified of selection.
- The overhead audit shall be performed by an independent CPA firm or cognizant government agency.
- The audit shall be subject to review and approval by the ACO.
- If the proposed services require the establishment of a field office), a separate audited field overhead rate must be submitted. If no audited field overhead rate is available, an overhead rate of 75% will be allowed.

The City reserves the right to request additional information related to cost proposals.

XIII. PROPOSAL SUBMISSION COVENANTS

The Offeror's signature on the RFP Cover Page covenants and certifies acknowledgement and compliance with following:

1. Fully Informed

The Offeror acknowledges that they have read this solicitation, understand it, has satisfied itself from its own investigation of the conditions to be met and/or products to be provided, fully understands Offeror's obligation, agrees to be bound by this solicitation's terms and conditions, and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Offeror has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of products and/or work proposed and to be provided under this RFP.

2. Collusion

In the preparation and submission of this RFP, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

3. Employees Not to Benefit

- a. To the best of the Offeror's knowledge, no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing this contract.

If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Offeror shall

address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation for RFP Number should be referenced in the disclosure.

4. Licenses and Insurance

The firm submitting the Offer is licensed and registered to do business in the Commonwealth of Virginia and has the current licensing and certification as may be required under this solicitation as of the date of Offeror submission.

If awarded the contract, the Consultant shall have insurance coverages as specified in section entitled "Standard Provisions", sub-section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

5. Ethics In Public Contracting

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Public Procurement Act as set forth in the Code of Virginia, as amended, pertaining to Offerors, Offerors, contractors, and subcontractors are applicable to this solicitation. By submitting a proposal, the Offeror certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

6. Conflict of Interest

The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" above, supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

7. Employment Discrimination By Consultant/Contractor Prohibited

During the performance of any resultant contract, the Offeror will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

a. During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

8. Drug Free Workplace

In every Contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

XIV. CONTRACT TERM AND RENEWAL OPTIONS

- A. If a contract is awarded, it shall cover the target period from date of award for a 12-month initial term. The City reserves the right to renew the contract upon the same pricing, terms, and conditions at the expiration of its initial term for four (4) additional, successive one-year periods, except as otherwise provided herein, contingent upon availability of funds for the purpose and the needs of the City. Contract renewals must be authorized by and coordinated through the City's Purchasing Department. Automatic contract renewals are prohibited.
- B. Notice of intent to renew may be given to the Consultant in writing by the City, normally sixty (60) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City of Falls Church to a contract renewal.
 Consultant shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if Consultant intends not to extend the contract term.
- C. The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract. Awarded contract(s) shall cover the target period through completion of all requirements and acceptance of all deliverables under all Task Orders.
- D. **MULTIPLE AWARDS** - The City reserves the right to award contracts to more than one qualified firm, to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal, if it is in the best interest of the City to do so. Each multiple award contract will be negotiated and awarded sequentially following the same procedures set forth in the VPPA.
- E. **NON-APPROPRIATION OF FUNDS** - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council, as applicable. In the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

XV. TASK ORDER CONTRACT

A. General

The Contracts awarded pursuant to this solicitation will allow the City to utilize “basic ordering agreements” for professional engineering services. Services shall be provided by the Consultant on an as-needed basis, as requested by the City. The sum of all Task Orders/projects performed in one contract term and the cumulative total project fees for the contract shall not exceed the applicable thresholds per the current *Virginia Public Procurement Act*.

B. Multiple Contract Awards

Multiple contracts will be awarded under this solicitation. Specific individual tasks may be directed, in the City’s sole discretion, to the firm best suited for that particular assignment. At times, the City may request and consider written proposals, including cost estimates, from multiple Consultants.

Transportation Planning & Engineering Category: The City will make a minimum of three (3) contract awards in this category (total from both Groups combined). However, the City seeks to make 2-3 awards within each of the two groups (total of 4-6 awards).

C. Task Order Proposals

The City will typically require the Consultant to provide a Task Order (TO) Proposal for a specific task, to include an estimate of hours to perform the work based upon fixed hourly rates per position classification. Each TO Proposal shall contain a narrative describing the scope of work to be performed; the Consultant’s costs separated by task; estimated hours to be performed by each position classification; detailed subconsultant costs; estimated time for completion (schedule); Quality Control Plan (with task-specific amendments as necessary); and other details as may be required by the City. The TO Proposal shall identify qualified staff who will personally perform the requested services and who will provide Quality Assurance/Quality Control. TO Proposals shall be prepared at no additional cost to the City; the City may request revisions to the proposal.

After review and acceptance of a TO Proposal, the City will issue a purchase order to perform the work and will notify the Consultant of acceptance. When the Consultant is approaching the dollar amount of the purchase order and if additional work appears to be necessary, the Consultant shall immediately notify the City. Some Tasks may be completed more quickly and at a lower cost than estimated, while others may require additional scope and budget, subject to City approval. In all cases, the Consultant shall strive to complete each task in the most cost-effective manner.

D. Task Order Invoicing

The Consultant shall invoice the City monthly with at least the following level of detail for each Task:

- Name and address of the Firm;
- Date(s) services provided;
- Description of services provided;
- Labor categories used (position classification) and applicable approved rates;
- Number of hours by labor classification charged;
- City Purchase Order (PO) number;
- Contract Task number;
- Subcontracted services, if applicable:
 - List of subcontractor/subconsultant services;
 - Amount or percentage of subcontractor markup, if allowable per contract;
 - Copy of paid invoices to approved subcontractor shall be submitted with invoice;
- Direct Costs (e.g. mileage, copying, etc.), as applicable:
 - Itemization of costs;

- Current approved rate per contract;
- Documentation of direct costs shall be copy of Consultant's paid invoice, as applicable.
- Final invoices shall be marked as such, submitted only after delivery and acceptance of all required deliverables.

The City may require additional detailed time records, documentation for other expenses, and other supporting documentation for billing requests. Percentage of task completion is not an acceptable method of invoicing for professional service contract tasks. The City will pay its Consultants based upon the completion, acceptance and approval of the services provided and as presented on detailed invoices.

XVI. RATES AND RATE ADJUSTMENTS

No rates or fee schedules are to be provided with initial proposal submittal. Short-listed firms will be specifically requested to submit non-binding and/or binding rates, fees, and/or project costs at the applicable time during the evaluation and award process.

- A. All Contract rates and pricing will remain fixed through the first term of the contract or 365 days, whichever is later.
- B. Thereafter, the Consultant may request, in writing, an increase in unit prices once every 365 days to coincide with the contract anniversary.
- C. The Consultant shall provide the City prior written notice of any potential increases at least sixty (60) days prior to the proposed effective date of such increase. The request for a change in the unit price shall include as a minimum, the cause for the adjustment and the proposed effective date, and; the amount of the change requested.
- D. Any price increases shall be no greater than the percentage change of the CPI-U for the Washington-Baltimore area using Table 4 *Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index*; Washington-Baltimore, DC-MD-VA-WV area as listed for the most recent twelve month period on the U.S. Department of Labor's Bureau of Labor Statistics website or five percent (5%), whichever is lower.
- E. Escalation rates for Tasks funded through VDOT either directly or as a pass-through agency may be subject to the VDOT-approved escalation rate for professional services contracts.
- F. All increases must be reviewed and approved by the City's Purchasing Department. Any price adjustment agreed to shall take place only in accordance with the schedule defined above as documented in a contract amendment.
- G. Any orders placed prior to the proposed effective date of the increase shall not be subject to such increase.
- H. Rates specified by the Offeror shall include all direct and indirect overhead costs including but not limited to transportation, general and administrative cost, etc. Labor rates will be paid on the basis of time at the site.
- I. Price reductions may be initiated by the Offeror at any time and shall be effective immediately.

No prices, rates or fees are to be provided with initial Proposal submittal.

XVII. PROMPT PAYMENT DISCOUNT

- A. Unless otherwise specified herein, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a proposal for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- B. In connection with any discount offered, time will be computed from the date an undisputed invoice is received by the City. In the event the Offeror does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

- C. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, if applicable.

XVIII. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

- A. Unless otherwise specified, the potential tasks identified in this RFP are for information to the Offeror and for proposal evaluation purposes only. They do not necessarily indicate the actual tasks that will be ordered since such tasks will depend upon requirements that develop during the contract period.
- B. Tasks or quantities described in this RFP shall not be construed to represent any amount of services of which the City shall be obligated to purchase under the contract, or relieve the Consultant of his obligation to perform all services which may be ordered under the contract.
- C. The City reserves the right to expand or delete services as necessary and cannot guarantee the amount of work or predict funding for planned projects.
- D. No proposal will be considered which stipulates that the City shall guarantee to order a specific service, task or quantity thereof.

XIX. SUBCONSULTANTS

In the event that the Offeror desires to subcontract some part of the work specified in this solicitation, the Offeror shall furnish the City the names, qualifications, and experience of the proposed subcontractors and the percentage of the work under any resultant contract to be performed by each with the proposal. In addition, if during the course of the contract, the Offeror wishes to use a subcontractor(s) other than the firms identified in its original proposal, advance written notice and approval of the City shall be required. In some instances, state or federal agency approval of additional Subconsultant(s) shall be required. The City reserves the right to reasonably reject the Consultant's selection of subcontractors.

- A. The Offeror shall provide services as the Prime Contractor under any resultant contract and all subcontractors shall be responsible to the Prime Contractor.
- B. The Consultant shall be and remain fully liable and responsible for directing and supervising their subcontractors, all payment to, and their subcontractor's performance (including acts and omissions) under the contract. The contractor shall be liable and responsible for their subcontractor's compliance with all requirements of the contract including but not limited to: insurance, federal, local and state laws, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.
- C. The Consultant shall not enter into any contract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or other state where the contract is to be performed.
- D. The Consultant shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- E. Nothing contained in this solicitation or any resultant contract shall create any contractual relationship between any subcontractor and the City.
- F. When so requested by the City, the Consultant shall provide a copy of its contract with a specific subcontractor. For tasks supported by federal funds, the Contractor shall be responsible for ensuring that the subcontracts complies with federal contract requirements as applicable.

XX. TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposals shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia) for consideration and acceptance by the City as trade secrets or proprietary information.
- B. If the proposal contains any proprietary or trade secret material, such notice must be attached as the **first page of the proposal and clearly identify the material/information** by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the Offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary.
- C. **Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the proposal.**

XXI. DEBARMENT STATUS

By submitting a proposal, the Offeror (including any partner, associate, or subcontractor associated with the provision of good/services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids/proposals or on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the U.S. Government's System for Award Management (SAM) available at www.sam.gov.

XXII. AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE RFP

- A. If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposal, it shall immediately notify the City of such error in writing and request modification or clarification of the document. The City will make modifications to material issues by issuing a written revision and will give written notice via addendum posted on the City's website (www.fallschurchva.gov/Bids) and eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (www.eva.virginia.gov).
- B. The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal.

XXIII. CONTRACT DOCUMENTS

- A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded inclusive of any terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
- B. Other documents which shall become a part of any resultant contract include but are not limited to:
 - 1. Offeror's Proposal and any modifications accepted by the City;
 - 2. Proposal clarifications; responses to questions/issues;
 - 3. Documents submitted in conjunction with oral discussions/presentations; and

4. Memoranda of Negotiations including cost proposal.
- C. EXCEPTIONS – This solicitation contains terms and conditions the City favors and intends to use in any resultant contract. The City reserves the right to negotiate any and all terms, conditions, prices and/or exceptions as may be in its best interest.
- D. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between the Offeror and the City or Purchase Order is issued and accepted.
- E. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

XXIV. CONTRACT AWARD

- A. Following initial evaluation of the written Proposals as submitted and other information gathered to date, the City will make selection of Offerors deemed to be fully qualified and best suited among those submitting Proposals, on the basis of the factors involved in the RFP. The City may request the selected Offerors to make oral presentations.
- B. The City shall engage in individual discussions with two (2) or more Offerors it deems to be fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews are permissible. Offerors will be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed contract, as well as alternative concepts. At the discussion stage, the City may request and discuss non-binding fee schedules and/or total project costs including man-hours or costs for services.
- C. At the conclusion of discussions, on the basis of the evaluation criteria so stated in the RFP and all information developed in the selection process to this point, the City shall select in the order of preference two (2) or more Offerors whose professional qualifications and proposed services are deemed most meritorious.
- D. Negotiations shall then be conducted, beginning with the highest ranked Offeror. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked highest shall be formally terminated and negotiations conducted with the Offeror ranked next highest, and so on until a contract is awarded at a fair and reasonable price. Alternately, the City may elect to cancel this solicitation and make no award.
- E. Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- F. The City reserves the right to conduct a cost or price analysis for any proposed procurement. If only one proposal is received in response to the RFP or the City otherwise determines that there is insufficient competition, a cost proposal and analysis of three (3) contracts, if available, awarded to the Offeror within the past two (2) years may be requested of the single Offeror. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable
- G. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the Offeror's proposal as negotiated.
- H. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the City, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion.
- I. Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (Code of Virginia, §2.2-4342D). The Proposal Evaluation results shall remain confidential until after the Notice of Contract Award and contract execution with the successful

Offeror(s). Properly designated proprietary information from competing Offerors shall not be disclosed to the public or competitors, except as may be required by law.

- J. All awards for professional goods and services over \$60,000 are contingent upon City Council approval.
- K. Public announcement of an award or intent to award will be posted on the City's website: www.fallschurchva.gov/Bids.
- L. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous or otherwise debrief any Offeror.

XXV. PROTEST OF AWARD OR DECISION TO AWARD

Any Offeror may protest the award or decision to award only in accordance with the provisions of Sections 2.2-4357 through 4364 of the Code of Virginia, and only if such is provided for in such Code section.

XXVI. TAX EXEMPTION

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Such Certificate will be furnished upon request. The price offered must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, an Offeror may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

XXVII. ANTI-DISCRIMINATION

By submitting their proposals, Offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E)

XXVIII. ORDER OF PRECEDENCE

- A. In the event that there is a conflict between any specific terms, conditions and/or provisions of this RFP, the specific provisions of the RFP shall take precedence over the "Standard Provisions" which shall take precedence over the "General Conditions and Instructions to Offerors" sections herein.
- B. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this solicitation, the contract shall take precedence over the Request for Proposals which shall take precedence over the Offeror's response to the Request for Proposals unless otherwise stipulated in the contract.
- C. For tasks or projects funded by any Federal Government agency, in the event there is a conflict between the specific terms, conditions and/or provisions of any contract documents resulting from this RFP and the terms, conditions and/or provisions of such agency, that agency's terms, conditions and provisions shall take precedence.

XXIX. VDOT and/or FEDERAL GOVERNMENT CONTRACT REQUIREMENTS

If any purchase order, task(s) or task order under any contract resulting from this RFP is to be funded in whole or in part by the Virginia Department of Transportation (VDOT) or any other State or Federal Government funding source, the Consultant shall comply with supplemental terms and conditions. This shall include the utilization of Disadvantaged Business Enterprises (DBEs), as applicable and required by any state and/or federal agency for such applicable tasks and/or projects. The City reserves the right to amend the contract, as is permitted, for inclusion of such terms, conditions and provisions.

For each purchase order, task or task order issued under the contract to be funded by VDOT or Federal Government sources, the City will notify Consultant of the funding source and the Consultant shall comply with the associated requirements.

Necessary specifications, provisions and clauses in Federal and/or VDOT documents, including but not limited to the most current versions of the *Virginia Department of Transportation Road and Bridge Specifications*, *Virginia Department of Transportation Road and Bridge Standards*, and the *Virginia Work Area Protection Manual* are incorporated herein by reference and made a part hereof.

If any task issued by the City is funded by grant monies, the Offeror, the City and the Offeror shall adhere to terms and conditions specified in individual grant agreements.

On December 26, 2013 new consolidated guidance was issued by the federal government in the form of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200). The purpose of the "Uniform Guidance" was to streamline and establish standardized administrative requirements, cost principles, and audit requirements for Federal Awards to non-Federal entities. As a sub-Grantee of federal funds, the City and its consultants/contractors must agree to compliance with all applicable federal regulations, recognizing that (1) these funds are subject to applicable statutory provisions and regulations; and (2) grant awards are subject to the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200).

XXX. EQUAL OPPORTUNITY AND SMALL, MINORITY-OWNED, WOMEN-OWNED AND SERVICE-DISABLED VETERAN-OWNED BUSINESS PARTICIPATION

The City endeavors to contribute to the preservation and growth of small, minority-owned, women-owned and service-disabled veteran-owned businesses by encouraging participation in the procurement process for goods and services. The City:

- a. Prohibits employment discrimination by contractors and requires that every City contract over \$10,000 include language to this effect, including subcontracted work; and
- b. Publishes formal solicitations on the Commonwealth's eProcurement portal, eVA, which provides access to procurement opportunities by firms registered with the Virginia Department of Small Business and Supplier Diversity (SBSD).

The SBSD is Virginia's agency dedicated to enhancing the participation of small, women- and minority-owned businesses in Virginia's procurement process. SBSD administers three certification programs: 1) **SWaM** - The Small, Women-owned, and Minority-owned Business certification program (state); 2) **DBE** - The Disadvantaged Business Enterprise certification program (federal); and 3) **ESO** - Employment Services Organization providing community-based employment services to individuals with disabilities. More information is available at www.dmbv.virginia.gov.

Contractors/consultants are encouraged to use SWaMs on all state-funded projects and DBEs on federally-funded projects. For certain grant-funded projects, SWaM or DBE requirements and/or goals shall be applicable and the City's vendors shall comply with the requirements set forth by the U.S. OMB pertaining to small and minority business utilization.

Notwithstanding the above, City contracts shall be awarded to the lowest responsible and responsive bidder or best value proposal in accordance with the solicitation value, type and evaluation/award details therein. There is no set aside program.

XXXI. CITY OF FALLS CHURCH STANDARD PROVISIONS

- A. Section Headings: The headings of the sections in the “Standard Provisions” and/or “General Conditions and Instructions to Offerors” are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

1. Authority to Transact Business in Virginia

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

2. Choice Of Law and Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

3. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the Code of Virginia including Section 2.2-4300, the Virginia Procurement Act; well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

4. Authorized Dealer/Distributor Responsibilities

The Contractor, as the manufacturer or an authorized dealer/distributor of the products specified in the solicitation, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.

5. Procedures

The extent and character of the services to be performed by the Contractor(s) or products delivered shall be subject to the general control and approval of the City's Project/Contract Manager assigned under the contract, the Purchasing Manager or his/her authorized designee(s). The contractor shall only comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

6. Key Personnel/ Project Staff

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Agent and submission of a resume of the proposed replacement for review and approval by the City.

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the City's Purchasing Agent or his/her designee. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed, including submission of a resume for the proposed replacement, for approval approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

Where required, personnel used by the Contractor to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Contractors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Contractor's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

7. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Contractors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

Orders for less than \$1,000.00 do not require a Purchase Order.

8. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

9. Ownership of Documents, Materials and Products

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public

inspection in accordance with the Virginia Freedom of Information Act. All work under the Contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

Any reports, specifications, drawings, blueprints, negatives or other documents/deliverables obtained or prepared by the Consultant in the performance of its obligations under the Contract shall be the exclusive property of the City of Falls Church, and all such materials shall be returned to the owner upon completion, termination, or cancellation of this Contract. The Consultant shall provide both hard copies and electronic copies of all deliverables produced under this contract, in formats as requested by the City. Consultant shall deliver signed/sealed documents as required by law and as requested by the City. The Consultant shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Consultant work under the Contract without the prior written consent of the City. Documents and materials developed by the Consultant under the Contract shall be the property of the City; however, the Consultant may retain file copies, which may not be used without prior written consent of the Owner.

10. Use Of Information:

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control, shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

11. Workmanship, Inspection and Acceptance

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or good delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or

replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

12. Task Order Cost Proposals

The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work, or if the task is for less than one thousand dollars (\$1,000), the City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Contractor's billing request.

For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Consultant shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.

Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

For architectural or professional engineering services relating to construction projects, the sum of all Task Orders/projects performed in one contract term and the project fee of any single task order/project shall not exceed limits set in the current VPPA.

13. BPOL License Requirement

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

14. Payment Terms

Payment will be made to Contractor once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Contractor. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending

verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified in §2.2-4352 of the VPPA (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

15. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted by the Contractor to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

16. Changes

The City may, at any time, by written order, require changes within the general scope of the services to be performed or the products to be provided under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor or associated Purchase Order received. No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

17. Additions/Deletions:

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract by contract

amendment. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted.

18. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors and/or subcontractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

19. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English-speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

20. Warranties and Guarantees

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

21. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

22. Contract Disputes Resolution

Arbitration shall not be applicable for the resolution of disputes between City and Contractor. Disputes by the Contractor with respect to this Contract shall be decided in the first instance by the City's Purchasing Agent. The Purchasing Agent will, after receipt of a letter from the Contractor addressed to the Purchasing Agent detailing the nature of the dispute, pertinent facts, and the Contractor's desired outcome, reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within twenty (20) days from the date of such decision, the Contractor submits or otherwise furnishes and the Purchasing Agent receives a written appeal addressed to the Purchasing Agent and City Manager. The decision by the City Manager shall be final and binding unless set aside by a Court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision, the Contractor shall proceed diligently with the performance of the Agreement in accordance with that decision.

Contractual claims, whether for money or other relief, shall be submitted by Contractor in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3rd Floor East Wing, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

23. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to

it by the City for products not delivered and/or services not rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under this contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

24. Delays/Service Failure

Failure of a Contractor to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or

failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

25. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

The Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

26. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
 - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability and, where applicable to the project (as determined by APS), Products and Independent Contractors. The general aggregate limit shall apply to this project.
 - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented

vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

- 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- 5) Maintain Professional Liability Insurance. The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form (E&O), as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.

Professional Services: Professional services (work performed by an independent contractor, within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering) shall require a certificate of insurance showing professional liability/errors and omissions coverage insurance with companies authorized or licensed to do business in Virginia, prior to the commencement of services. Certain other service providers shall meet the same requirements (including but not limited to asbestos design/inspection/or abatement contractors, and other health care practitioners).

The E&O Policy shall include the successful Offeror and the Offeror's subcontractors of every tier as the Offeror designated in the declarations.

The minimum E&O Policy limits to be provided by the successful Offeror (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the City and City's officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City with forty-five (45) days' notice of cancellation, non-renewal, change in coverages, and/or restriction.

- 6) Maintain Environmental Impairment Liability Insurance (if applicable) including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

- a. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
 - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
- 11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the City may possess."
- h. Where required by federal and/or state agreements with the City, offeror/bidder will cooperate and comply with the City's requirements under such agreement and add third party additional insured. When the City's funding sources so require, the Contractor shall agree to the City's reasonable requests and furnish the Insurance Certificate containing specified wording (e.g., naming the Northern Virginia Transportation Authority - NVTa or its Bond Trustee as "additional insured" for Special Transportation Fund projects).

- i. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.
- j. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

27. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

28. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All products and services shall meet the then current applicable local, state and federal rules and guidelines.

29. Brand Name Or Equivalent Items

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

30. Bonding/Contract Security

The City reserves the right to require a proposal, performance, and/or payment bond for contracts for goods or services if specified in this solicitation in accordance with sections § 2.2-4336. "Bid Bonds", § 2.2-4337 "Performance and Payment Bonds" and other related sections of the VA Public Procurement Act. In such case, the successful Offeror shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Offeror, the City reserves the right to award the contract to the next most highly qualified and responsible Offeror in the best interest of the City.

31. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

32. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the

City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

33. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA.

34. Immigration Reform And Control Act

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

35. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

36. Funding

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

37. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City.

If the Contractor desires to assign his/ her right to payment of the contract, Contractor shall notify the City's Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

38. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

39. Record Retention/Audits

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.

40. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

41. Time Of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

Maintaining design schedules is of critical importance to City projects. Design changes or developments that may affect design schedules should be evaluated for time impact at the onset. If delay of over 10 days is foreseen, the Consultant shall give immediate written notice to the City Project Manager. The Consultant must keep the City advised at all times of status of work. Default in scheduled completion (without documented reasons) or failure to meet scope of services, shall authorize the City to purchase services elsewhere and charge full increase in cost to the defaulting Consultant or deduct the costs from any balance owed the Consultant.

42. Reports

The Contractor must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

43. Antitrust

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

44. Relationship of the Parties

The Contractor will be legally considered to be acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

45. Severability

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

46. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

47. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

48. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

49. Confidentiality And Return Of Records

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the City request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

50. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

51. Data Sources

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

52. Conflict Of Interest

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

53. Shipping And Billing

Unless instructed otherwise by the City, Contractor shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (5) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (6) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (7) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Contractor, F.O.B., Destination, from Contractor's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Contractor and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

54. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

XXXII. GENERAL DEFINITIONS, CONDITIONS AND INSTRUCTIONS TO OFFERORS

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified.
 - B. If there is a conflict between the terms and conditions in this “General Conditions and Instructions to Offerors” and the Standard Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.
1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear in this solicitation regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
 - a. **OFFEROR:** Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a solicitation issued by the Purchasing Manager and offering to enter into contract with the City.
 - b. **CONTRACTOR/CONSULTANT:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - c. **CITY:** City of Falls Church.
 - d. **DAY:** Unless otherwise specified “day” or “days” shall mean calendar days
 - e. **GOODS/PRODUCTS:** All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
 - f. **INFORMALITY:** A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - g. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
 - h. **PROPOSAL:** The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A proposal is subject to scope and price negotiation.
 - i. **PURCHASING AGENT:** The Purchasing Agent employed by the City of Falls Church, Virginia or his/her designee.
 - j. **REQUEST FOR PROPOSAL (RFP):** A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
 - k. **RESPONSIBLE OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
 - l. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
 - m. **SOLICITATION:** as applicable the RFP or process of notifying prospective Offerors that the City wishes to receive proposals on a set of requirements to provide goods or services.
 - n. **STATE:** Commonwealth of Virginia.

2. **LEGAL ACTION:** No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
3. **CONDITION OF COMMODITIES:** All items proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in proposal invitation/proposal request. Verbal agreements to the contrary will not be recognized.
4. **SAMPLES:** Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Offeror, if requested, at Offeror's expense. Each sample must be marked with the Offeror's name and address, City's request number and opening date. **DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.**
5. **FORMAL SPECIFICATIONS** - When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Offeror will be required to furnish articles in conformity with that specification. The Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
6. **FEDERAL SPECIFICATIONS** - Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).
7. **COVENANT AGAINST CONTINGENT FEES** - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
8. **LABELING OF HAZARDOUS SUBSTANCES** - If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Offeror, by submitting his proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the Offeror does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263. Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
9. **MATERIAL SAFETY DATA SHEETS** - Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
10. **SHIPPING** - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
11. **RESPONSIBILITY FOR SUPPLIES TENDERED** - Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

12. **COMPLIANCE** - Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
13. **POINT OF DESTINATION** - All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
14. **CONTRACT ALTERATIONS** - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
15. **BANKRUPTCY** - If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.
16. **SUBCONTRACTING** - If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor and that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

Except as otherwise specified in the solicitation, the Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.
17. **GENERAL GUARANTY** - The Contractor agrees to:
 - a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City;
 - b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery;
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible;
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City; and
 - e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

18. SERVICE CONTRACT GUARANTY: The Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time;
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence;
- c. Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents;
- d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the Proposal for any services not rendered in strict conformity with the contract; and
- e. Stipulate that the presence of a City inspector shall not lessen the obligation of the Proposal for performance in accordance with the contract requirements, or be deemed a defense on the part of the Proposal for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.